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Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR.

CRIMINAL APPEAL NO. 995 OF 1997.

CRIMINAL APPEAL UNDER SECTION 374 OF THE
CODE OF CRIMINAL PROCEDURE.

6677
Mangaram son of Iatu, aged
about 45 years, resident of
village Gadhsiliyara, Police
Station Keskai, District
Bastar, M.P.

Filed on 9.5.92
by Shri. M. B. Nuthi
Advocate

AB 9.5.92
R.A.R.

...
APPELLANT.
ACCUSED.

(IN JAIL).

V E R S U S.

The State of Madhya Pradesh,
through Station House Officer,
Keskai, District Bastar,
M.P.

...
RESPONDENT.

CONVICTION.

SENTENCE.

9.5.92

CLERK

O/o. Advocate General

आदेश पत्रक

मामला क्रमांक

G.A. 995/97

सन् 2006

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>Division Bench: -</u> <u>Hon'ble Mr. L.C. Bhadoo and</u> <u>Hon'ble Mr. Dharendra Mishra, JJ.</u> <u>13-2-2006</u> Mr. Anand Verma, counsel for the appellant. Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent. Oral judgment dictated on Dais. <u>Per L.C. Bhadoo, J: -</u> By this appeal under Section 374 (2) of the Code of Criminal Procedure, accused/appellant Mangauram has questioned legality and correctness of the judgment of conviction and order of sentence dated 21-4-1997 passed by the Additional Sessions Judge, Kanker, in Sessions Trial No.465/95, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the murder of Shobharam, convicted him under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life. Case of the prosecution in brief is that on 3rd September, 1995, there was a festival of Naya Khani, on that day, deceased Shobharam went to Village: Gadhsiliyara, Police Station: Keshkal to the residence of accused Mangau and demanded mutton on which Mangau replied that they have cooked mutton for themselves "you go and take mutton at your residence". On this, deceased Shobharam said to accused/appellant Mangau "your son Narendra is residing with my father and taking food there, even then you are not providing rice", while saying so, he picked up a wooden plank and rushed towards Mangau to assault him. Accused Smt. Mangobai came in between	

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	and the wooden plank hit on the wrist of Mangobai, which enraged the accused persons, they picked up axe & club and assaulted the deceased as a result of which Shobharam died. The matter was reported by Lahar Singh to Police Station: Keshkal on which mereg intimation (Crime No.136/95) was registered. The investigation was taken up and at the instance of accused Mangau, axe was recovered under recovery memo Ex.P-17 and club was also recovered under recovery memo Ex.P-17. The Investigating Officer after giving notices to the Panchas prepared the Panchnama (Ex.P-13) of the body of Shobharam. He also prepared the site plan (Ex.P-3) of the place of occurrence. Plain soil and blood stained soil were taken into possession under Ex.P-14 from the place of occurrence. Blood stained clothes of the deceased, which were sent by Primary Health Centre, Keshkal were taken into possession under Ex.P-5. Blood stained articles were sent to Forensic Science Laboratory, Raipur, from where the report Ex.P-11 was received. The body of Shobharam was sent for post-mortem examination to Primary Health Centre, Keshkal, where Dr. D.K. Bisen (PW-6) conducted post-mortem and opined that death is due to neurogenic and hypovelmic shock due to the injuries caused on the body of the deceased. After completion of investigation, charge sheet was filed against accused Mangauram, Smt. Mangobai & Narendra in the Court of Judicial Magistrate, First Class, Kanker, who in turn committed the case to the Sessions Judge, Jagdalpur, from where learned Additional Sessions Judge, Kanker, received the case on transfer for trial. The prosecution in order to establish charge against the accused persons examined eight witnesses. Statements of the accused persons	

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	were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them. Learned Additional Sessions Judge after hearing the arguments of A.G.P. and counsel for the accused persons convicted the accused/appellant as mentioned above, and however, acquitted co-accused Smt. Mangobai & Narendra. We have heard Mr. Anand Verma, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor on behalf of the State/respondent. The homicidal death of Shobharam is not in dispute. As far as involvement of the accused/appellant in the crime in question is concerned, all other witnesses have turned hostile except Jeetu (PW-5) who is the son of the deceased. He has stated in his evidence that on the fateful day at the fateful time, he was at the scene of occurrence and he saw the accused persons assaulting his father Shobharam. He has further stated that on the fateful day, there was Naya Khani festival, the deceased as well as the accused persons consumed liquor, they had taken meals together, thereafter when Shobharam, his father, demanded mutton, some altercation took place and in that process the accused persons assaulted Shobharam. Learned trial Court has observed that the evidence of Jeetu (PW-5) is un-rebutted and further observed that the axe, weapon of offence, was recovered at the instance of the accused/appellant and blood was found on that, therefore, involvement of the accused assaulting injury by the axe is established. As far as the other accused persons are concerned, no	

[पीके देवियरे]

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

भाषा कथक

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दिनांक

आदेश का दिनांक आदेश क्रमिक संख्या	आदेश संख्या संख्या - 4 - कामलधारी माधवों में हिंदी रिजिस्ट्रार के अतिरिक्त आदेश	bloodstains were found, therefore, there was no corroborative evidence against them, hence the trial Court acquitted them. In view of the evidence of Jeetu (PW-5), involvement of the accused/ appellant in assaulting the deceased is established and to that extent, we do not find any illegality or infirmity in the finding of the trial Court. As far as the question of conviction of the accused/appellant under Section 302 of the I.P.C. is concerned, learned counsel for the appellant argued that the accused assaulted the deceased in a heat of passion and in a sudden quarrel without any pre-meditation, therefore, the offence against the accused/appellant does not travel beyond Section 304 Part-II of the I.P.C. On the other hand, Mr. Dec, learned Additional Public Prosecutor supported the judgment of the trial court. In order to appreciate the argument advanced by learned counsel for the appellant, we have perused the evidence of Jeetu (PW-5) as well as the other record. From the record and evidence of Jeetu it is established that on the fateful day, the deceased went to the house of the accused persons where they consumed liquor and when the deceased demanded mutton, the accused/appellant refused on which some altercation took place between the two, the deceased rushed towards the accused and in return he assaulted the deceased with axe. Moreover, the deceased and the accused/appellant are close relatives. The deceased was brother-in-law of the accused/appellant.
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	In view of the above facts, it appears that the quarrel started on a petty matter and when the deceased tried to assault the accused/appellant with wooden plank, which hit on the wrist of other accused namely, Smt. Mangobai that enraged the accused persons and the accused/appellant assaulted the deceased with axe. Therefore, there was no pre-meditation or pre-plan and the accused assaulted the deceased in a heat of passion in a sudden quarrel after picking up the axe lying nearby. In the circumstances, intention of the accused to cause the death of Shobharam was missing. However, it can safely be inferred from the facts and circumstances that when the accused was assaulting the deceased with axe, he was having the knowledge that by assaulting with axe he may cause the death of Shobharam. Therefore, from the above facts, offence against the accused/appellant under Section 304 Part-II of the I.P.C. is established and his conviction under Section 302 of the I.P.C. cannot be sustained. In the result, the appeal partly succeeds and the same is partly allowed. Conviction and sentence awarded to the appellant under Section 302 of the I.P.C. are set aside, instead thereof he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo imprisonment for ten years. The accused/appellant is said to be in detention since 4-9-1995, which is not disputed by Mr. U.N.S. Deo, learned Additional Public Prosecutor.. Therefore, the accused has already undergone the sentence. It is directed that he be set on liberty forthwith, if not required in any other case.	Sd/- Dhirendra Mishra Judge

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

[पीछे देखिये]